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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMAR RASHAD GEETER,

Defendant and Appellant.

A153288

(San Francisco City & County
Super. Ct. No. SCN224140)

A jury returned verdicts convicting defendant Jamar Rashad Geeter (Geeter) of commercial sex trafficking, forcible rape and oral copulation, statutory rape, and pimping and pandering of two minors: Z.H., age 14, and B.C., age 16.¹ In an unpublished opinion, *People v. Geeter* (Oct. 19, 2018, A148523), this court affirmed Geeter's convictions.

Geeter now appeals a noneconomic victim restitution award to Z.H. and B.C., arguing that the court lacked statutory authority to award noneconomic restitution under Penal Code section 1202.4, subdivision (f)(3)(F)² (section 1202.4(f)(3)(F)) because such restitution may only be awarded to victims under the age of 14. The People concede that the award to B.C. was improper but contend that the court's award of noneconomic restitution to Z.H. was valid. We reverse the noneconomic restitution award to B.C., but affirm the award to Z.H.

¹ We refer to the minor victims by their initials to protect their privacy.

² Further statutory references are to the Penal Code unless otherwise stated.

BACKGROUND

Geeter was convicted of multiple counts of commercial sex trafficking of a minor (§ 236.1, subd. (c)(2)); multiple counts of forcible rape and oral copulation of a minor 14 or older (§§ 261, subd. (a)(2), 261.5, subd. (d), 288a, subd. (c)(2)(C)); one count of statutory rape as a lesser included offense of forcible rape of a minor 14 or older (§ 261.5, subd. (d)); and multiple counts of pimping and pandering minors under and over the age of 16 (§§ 266h, subd. (b)(1), (2); 266i, subd. (b)(1), (2)). The facts underlying Geeter's convictions are set forth in detail in *People v. Geeter, supra*, A148523, and we adopt and incorporate the facts in that unpublished opinion by reference.

After the jury returned verdicts against Geeter, the People requested restitution for B.C. and Z.H. At the restitution hearing, the court ordered Geeter to pay economic restitution and \$100,000 in noneconomic restitution to each victim under section 1202.4(f)(3)(F). Geeter appealed the court's award of noneconomic restitution to both victims.

DISCUSSION

I. The Noneconomic Restitution Award to Z.H.

As applicable at the time of the court's restitution order, section 1202.4(f)(3)(F) authorized an award of restitution for "[n]oneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288." (Stats. 2016, ch. 37, § 3.) Section 288, subdivision (a) (section 288(a)) criminalizes lewd or lascivious acts upon a child under 14 when committed with the requisite intent.³ Section 288, subdivision (b) (section 288(b)) criminalizes the acts in subdivision (a) when committed by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim

³ Section 288, subdivision (a), provides in full: "Except as provided in subdivision (i), a person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years."

or another person.⁴ Section 288, subdivision (c)(1) (section 288(c)(1)) criminalizes the acts in subdivision (a) when committed against a 14- or 15-year-old victim where the perpetrator is at least 10 years older than the victim.⁵

People v. McCarthy (2016) 244 Cal.App.4th 1096, 1105–1106 (*McCarthy*), and *People v. Martinez* (2017) 8 Cal.App.5th 298, 306 (*Martinez*), interpreted the phrase “felony violations of Section 288” under section 1202.4(f)(3)(F) to include both felony convictions under section 288 and felony convictions for conduct violating section 288, even if the conviction itself was not under section 288. Both cases involved felony convictions under section 288.5 premised on lewd and lascivious conduct that violated section 288.⁶ Division Two of this court recently endorsed the holdings of *McCarthy* and *Martinez* and agreed that noneconomic restitution may be awarded absent a conviction

⁴ Section 288, subdivision (b), provides in full: “(1) A person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years. [¶] (2) A person who is a caretaker and commits an act described in subdivision (a) upon a dependent person by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, with the intent described in subdivision (a), is guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years.”

⁵ Section 288(c)(1) provides in full: “A person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. In determining whether the person is at least 10 years older than the child, the difference in age shall be measured from the birth date of the person to the birth date of the child.”

⁶ Section 288.5, subdivision (a), provides in full: “Any person who either resides in the same home with the minor child or has recurring access to the child, who over a period of time, not less than three months in duration, engages in three or more acts of substantial sexual conduct with a child under the age of 14 years at the time of the commission of the offense, as defined in subdivision (b) of Section 1203.066, or three or more acts of lewd or lascivious conduct, as defined in Section 288, with a child under the age of 14 years at the time of the commission of the offense is guilty of the offense of continuous sexual abuse of a child and shall be punished by imprisonment in the state prison for a term of 6, 12, or 16 years.”

under section 288 where a felony conviction under section 288.5 is premised on lewd and lascivious conduct that violates section 288. (*People v. Lee* (2018) 24 Cal.App.5th 50, 56 (*Lee*); but see *People v. Valenti* (2016) 243 Cal.App.4th 1140 [reversing a noneconomic restitution award after the People conceded that such restitution was not authorized where the defendant engaged in three or more acts of substantial sexual conduct with a child under 14 and was convicted of continuous sexual abuse under section 288.5].)

At the outset, we note that Geeter does not argue that *McCarthy*, *Martinez*, and *Lee* were wrongly decided, nor does he contest that he was convicted of felony conduct for acts that constitute a violation of section 288(c)(1). Instead, Geeter argues that the court lacked authority to order noneconomic restitution in this case because such restitution can only be awarded to children under 14 who are victims of conduct violating section 288(a) or (b), and not to 14- and 15-year-olds who are victims of conduct violating section 288(c)(1). The People counter that although Geeter was not convicted under section 288, his conduct violated section 288(c)(1), and noneconomic restitution was thus available to Z.H. This appeal presents a pure issue of statutory interpretation, which we review de novo. (*Lee, supra*, 24 Cal.App.5th at pp. 54–55.)

“In construing the statute, ‘our principal task is to ascertain the intent of the Legislature.’ [Citation.] The process of statutory interpretation may involve up to three steps. [Citation.] First, because the statutory language is generally the most reliable indicator of legislative intent, we look to the words themselves, giving them their ordinary meanings and construing them in context. [Citation.] We do not consider statutory language in isolation ‘but rather examine the entire substance of the statute in order to determine the scope and purpose of the provision.’ [Citation.] Although we must follow the statute’s plain meaning if such meaning can be discerned, we will not do so if adherence to plain meaning ‘would lead to absurd results the Legislature could not have intended.’ [Citation.] ‘In such circumstances, “[t]he intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.” ’ [Citation.]

“ ‘If the plain language of the statute does not resolve the inquiry, as a second step we may turn to maxims of construction, “ ‘which serve as aids in the sense that they express familiar insights about conventional language usage.’ ” [Citations.]’ [Citation.] We may also consider other extrinsic aids to statutory construction, including the statute’s legislative history and the historical circumstances of its enactment. [Citations.] In addition, since we here construe a restitution statute, ‘we are guided by the broad constitutional mandate of California Constitution, article I, section 28, subdivision (b).’ [Citation.] ‘ “In keeping with the [voters’] ‘unequivocal intention’ that victim restitution be made, statutory provisions implementing the constitutional directive have been broadly and liberally construed.” [Citations.]’ [Citation.]

“Finally, ‘[t]o the extent that uncertainty remains in interpreting statutory language, “consideration should be given to the consequences that will flow from a particular interpretation” [citation]’ [Citation.] In this final step, we “ ‘apply reason, practicality, and common sense to the language at hand. If possible, the words should be interpreted to make them workable and reasonable [citations].” ’ ” (*McCarthy, supra*, 244 Cal.App.4th at pp. 1104–1105.)

The language of section 1202.4(f)(3)(F) unambiguously allows a court to award noneconomic restitution to victims of “felony violations of Section 288.” Similarly, by section 288(c)(1)’s express terms, lewd and lascivious acts against a 14- or 15-year-old child can be punished as felonies when the perpetrator is at least ten years older than the victim and acts with the requisite intent. (§ 288(c)(1).) Accordingly, we find that section 1202.4(f)(3)(F) authorizes an award of noneconomic restitution to 14- and 15-year-old victims when the defendant is convicted of felony conduct that violates section 288(c)(1).⁷

⁷ To the extent ambiguity existed regarding whether a conviction under section 288 was required to award noneconomic restitution under section 1202.4(f)(3)(F), the well-reasoned opinions in *McCarthy*, *Martinez*, and *Lee* answered this question in the negative, and Geeter does not challenge these holdings.

Seeking to introduce ambiguity into the statutory text, Geeter argues that crimes under section 288(c)(1) are “public offenses,” rather than felonies when committed, so section 1202.4(f)(3)(F) does not allow noneconomic restitution for such crimes. This argument has no merit. Section 288(c)(1) is a wobbler statute, under which an offense can be punished either as a felony or as a misdemeanor. (§ 288(c)(1) [convictions hereunder are punishable by imprisonment in state prison for one, two, or three years, or imprisonment in a county jail for no more than one year].) “ ‘[A] wobbler is a felony at the time it is committed and remains a felony unless and until the principal is convicted and sentenced to something less than imprisonment in state prison (or the crime is otherwise characterized as a misdemeanor).’ ” (*People v. Sweeney* (2016) 4 Cal.App.5th 295, 301; *People v. Moomey* (2011) 194 Cal.App.4th 850, 857 [same]; *People v. Chaides* (2014) 229 Cal.App.4th 1157, 1164 [same].) Thus, by including all “felony violations of Section 288,” section 1202.4(f)(3)(F) necessarily includes conduct that constitutes a felony under section 288(c)(1).

Our conclusion that section 1202.4(f)(3)(F) plainly allows the noneconomic restitution awarded to Z.H. is sufficient to end our analysis. However, we also find that the second and third steps of statutory interpretation undercut Geeter’s construction of section 1202.4(f)(3)(F). Citing *Martinez*, Geeter argues that section 1202.4(f)(3)(F)’s legislative history shows that noneconomic restitution is available only where a defendant violates section 288(a) or (b). *Martinez* explained that the Legislature first authorized noneconomic restitution to victims of child molestation in Government Code section 13967, the predecessor statute to section 1202.4, in response to *J.C. Penney Casualty Ins. Co. v. M.K.* (1991) 52 Cal.3d 1009 (*J.C. Penney*), where the Supreme Court held that insurers were not required to indemnify insureds for damages caused by the insured’s sexual molestation of a child. (*Martinez, supra*, 8 Cal.App.5th at p. 306, citing *J.C. Penney, supra*, 52 Cal.3d at p. 1014.) Geeter argues that because the insured in *J.C. Penney* was convicted under section 288(a) and the court did not consider section 288(c)(1), noneconomic restitution cannot be awarded where a defendant’s conduct violates section 288(c)(1). We disagree.

First, *Martinez* directly rejects Geeter’s argument that the legislative response to *J.C. Penney* was limited to cases where a defendant violated section 288(a). “While the court [in *J.C. Penney*] decided the case in the context of a conviction under section 288[(a)], nothing in the decision limited its holding to this context.” (*Martinez, supra*, 8 Cal.App.5th at p. 306.) Instead, *J.C. Penney*’s holding extended broadly to acts of “ ‘sexual molestation of a child,’ ” and the Legislature likewise broadly sought to provide noneconomic restitution to victims of child molestation.⁸ (*Ibid.*) *Martinez* ultimately found that this legislative history supported its conclusion that “felony violation[s] of Section 288” includes felony convictions for conduct violating section 288, even if the conviction is not under section 288. (*Ibid.*)

Second, the Legislature amended section 1202.4 to provide for noneconomic restitution for felony violations of section 288 well after the enactment of section 288(c)(1). The Legislature proposed section 288(c)(1) in 1988 (Stats. 1988, ch. 1398, § 1), and the pertinent amendment to former section 1202.4 in 1996. (Stats. 1996, ch. 629, § 3).⁹ “When the Legislature enacts legislation, it is presumed to be aware of its

⁸ Geeter requests judicial notice of *J.C. Penney*’s docket to show that the petition for review therein was filed in June 1989, shortly after section 288(c)(1)’s effective date. We deny this request as irrelevant. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1089.) Section 1202.4(f)(3)(F) plainly allows for noneconomic restitution awards to victims where the defendant is convicted of felony conduct that violates section 288(c)(1); and, although there is no dispute that *J.C. Penney* involved an insured convicted under section 288(a), the Supreme Court did not limit its holding to child molestation that occurred only under section 288(a). (*J.C. Penney, supra*, 52 Cal.3d at pp. 1014, 1019-1028.)

⁹ The Legislature first provided for noneconomic restitution for felony convictions, as opposed to violations, of section 288 in 1994 in former subdivision (i) of section 1202.4, which read: “If the conviction is for felony violation of Section 288, restitution may be ordered pursuant to subdivision (f) . . . and the court may order that the restitution be paid to the victim to cover noneconomic losses, including, but not limited to, psychological harm.” (Former § 1202.4, subd. (i), as amended by Stats. 1994, ch. 1106, § 3.) This language was carried forward in the 1995 amendment (see Stats. 1995, ch. 313, § 5), and then changed to “felony violations of Section 288” in the 1996 amendment (see former § 1202.4, subd. (f)(3)(E), as amended by Stats. 1996, ch. 629, § 3).

prior enactments.” (*Wirth v. State of California* (2006) 142 Cal.App.4th 131, 140.) Had the Legislature intended to limit section 1202.4(f)(3)(F) to felony violations of section 288(a) and (b), it could easily have done so. It did not.

Interpreting section 1202.4(f)(3)(F) to allow awards of noneconomic restitution where a defendant’s conduct establishes a felony violation of section 288(c)(1) also comports with the statute’s legislative intent and the mandate of article I, section 28, subdivision (b) of the California Constitution. “[T]he overall history of the amendments to section 1202.4 reflects a legislative intent to enlarge, not restrict, the availability of restitution.” (*McCarthy, supra*, 244 Cal.App.4th at p. 1107.) Further, courts are to give liberal construction to restitution statutes to effectuate “the voter’s intention that victim restitution be made.” (*Id.* at pp. 1107–1108.) Section 288(c)(1) criminalizes lewd and lascivious acts against a “child of 14 or 15 years,” and allowing noneconomic restitution to these child victims fulfills both statutory and constitutional intent.

Geeter next argues that the 2018 amendment to section 1202.4(f)(3)(F) compels the conclusion that the statute only provides noneconomic restitution to children under 14. Effective January 1, 2018, section 1202.4(f)(3)(F) authorizes an award of “[n]oneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288, 288.5 or 288.7.”¹⁰ As explained in *Lee, supra*, 24 Cal.App.5th at pp. 57–60, this amendment addressed the perceived split of authority between *Valenti* on the one hand, and *McCarthy* and *Martinez* on the other. The amendment thus clarified rather than changed the law where conduct violating section 288 serves as the predicate acts for a defendant’s felony conviction. (*Ibid.*) Accordingly, where the defendant commits lewd and lascivious acts on minors in violation of section 288, the 2018 amendment confirmed that noneconomic restitution had been and remained available to victims of these acts. (*Id.* at pp. 59–60.) Moreover, the Legislature was clearly aware of section 288(c)(1) when it passed this recent amendment, yet again it did not limit section 1202.4(f)(3)(F) to felony violations of section 288(a) and (b). For these reasons, we

¹⁰ Section 288.7 makes it a felony for an adult to engage in sexual intercourse, sodomy, oral copulation, or sexual penetration with a child under 10.

reject Geeter’s argument that the recent amendment to section 1202.4(f)(3)(F) shows that the award of noneconomic restitution to Z.H. was prohibited.

Geeter’s interpretation of section 1202.4(f)(3)(F) would also produce absurd results. In *People v. Paz* (2000) 80 Cal.App.4th 293, 296–297, the court analyzed the legislative history of section 288(c)(1) and explained that the statute was enacted “to close a perceived loophole in the felony laws, with respect to 14- and 15-year-olds” so that lewd conduct on a child who was over 14 but under 16 could be charged as a felony when the perpetrator was at least ten years older than the victim. “We see in the statutory background a legislative desire to protect 14- and 15-year-olds from predatory older adults to the same extent children under 14 are protected by subdivision (a) of section 288.” (*Id.* at p. 297.) Given section 288(c)(1)’s legislative intent, and its enactment prior to the amendment to section 1202.4 authorizing noneconomic restitution for felony violations of section 288, it would be absurd to interpret section 1202.4(f)(3)(F) to allow noneconomic restitution to children under 14 where a defendant engages in felony conduct that violates section 288(a) or (b), but not to 14- and 15-year-old children where the defendant engages in felony conduct that violates section 288(c)(1).

II. The Noneconomic Restitution Award to Z.H. Did Not Violate Due Process

Geeter contends for the first time in his reply brief on appeal that allowing restitution to Z.H. under section 1202.4(f)(3)(F) violates his right to due process by depriving him of a state law entitlement. Geeter waived this argument by raising it for the first time on reply (*People v. Selivanov* (2016) 5 Cal.App.5th 726, 794), but his argument lacks merit in any event. As we have explained, because section 1202.4(f)(3)(F) authorized Z.H.’s noneconomic restitution award, the court did not deprive Geeter of a state law entitlement by awarding this restitution.

III. The Noneconomic Restitution Award to B.C.

With respect to B.C., the People concede that the court improperly awarded her noneconomic restitution, and this concession is appropriate. Because B.C. was 16 at the time Geeter committed crimes against her, Geeter’s conduct could not violate section

288. (See § 288(a) and (b) [requiring the victim be under 14 at the time of the offense]; (c)(1) [requiring the victim be 14 or 15 at the time of the offense].)

DISPOSITION

The court's order awarding noneconomic restitution pursuant to section 1202.4(f)(3)(F) is reversed only as to the award of \$100,000 to victim B.C.; the order is otherwise affirmed.

BROWN, J.

WE CONCUR:

POLLAK, P. J.

STREETER, J.